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In re Application of
MIN, Mart *et al*
U.S. Application No.: 09/937,875
PCT No.: PCT/SE00/00572
Int. Filing Date: 23 March 2000
Priority Date: 31 March 1999
Attorney's Docket No.: P01,0337
For: A RATE ADAPTIVE PACEMAKER

**DECISION
UNDER
37 CFR 1.181**

This decision is in response to the "Response to Notification of Missing Requirements" ("Pet") filed 30 January 2002 which has been treated as a petition under 37 CFR 1.181. No fee is required.

BACKGROUND

On 01 October 2001, applicants submitted a transmittal letter for entry into the national stage in the United States under 35 U.S.C. 371 which was accompanied by, *inter alia*, the basic national fee and authorization to charge required fees to Deposit Account No. 50-1519.

On 07 November 2001, the United States Designated/Elected Office (DO/EO/US) mailed a Notification of Missing Requirements Under 35 U.S.C. 371 indicating that the declaration in compliance with 37 CFR 1.497(a) and (b) and a surcharge fee of \$130.00 was required. A two-month time period for response was set.

On 30 January 2002, applicants submitted the instant petition which was accompanied by, *inter alia*, an executed declaration.

DISCUSSION

In the instant petition, applicants claim that a signed declaration was submitted with the present application and that the Notification of Missing Requirements was sent in error.

The Office has established a practice of providing a receipt for papers filed in the Office to any applicant desiring a receipt. The practice, long-established, requires that any paper for which a receipt is desired be filed in the Office with a self-addressed postcard identifying the paper. Section 503 of the Manual of Patent Examining

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Procedure (MPEP) lists procedures to ensure receipt of all papers filed in the USPTO. Applicants must enclose a self-addressed postcard identifying all of the papers filed. The USPTO will stamp the receipt date on the card and place it on the outgoing mail. The identifying data on the card must clearly identify the paper for which receipt is requested. A postcard receipt which itemizes and properly identifies the papers which are being filed serves as *prima facie* evidence of receipt in the USPTO of all the items listed thereon on the date stamped thereon by the USPTO.

In this case, applicants have not provided a copy of the date-stamped filing receipt for the documents submitted with the original application on 01 October 2001 claiming that "[d]ue to processing delays, the stamped return postcard for the application as originally filed has not been received by the undersigned counsel's law firm, as is the case for many applications filed within this time frame." Pet. at ¶ 2. Instead, applicants claim that "the application was accompanied by a cover sheet wherein the box for item 9 was checked, stating that an oath or Declaration was submitted therewith, and the Declaration which is in the file should be a telefaxed copy of the signed Declaration." *Id.* at ¶ 2.

A review of the above-captioned application reveals that the transmittal letter (Form PTO-1390) did indicate that a declaration was submitted. However, a further review of the subject application shows that the declaration purportedly filed on 01 October 2001 was not located in the file.

The Office file is the official record of what was mailed by "Express Mail" on 01 October 2001. An applicant alleging that a paper was filed in the Office and later misplaced has the burden of overcoming the evidence in the record. The transmittal letter is not checked by anyone to ensure that the item is included in the documents filed. In this case, the transmittal letter is not dispositive, the content of the Office file is.

Since a postcard receipt was not submitted, applicants have not provided *prima facie* evidence that the declaration was included with the papers on 01 October 2001.

CONCLUSION

Applicants' petition under 37 CFR 1.181 is **DISMISSED**.

If reconsideration on the merits of this petition is desired, a proper response must be filed within **TWO (2) MONTHS** from the mail date of this decision. Extensions of time may be obtained under 37 CFR 1.136(a).

Please direct further correspondence with respect to this matter to the Assistant Commissioner for Patents, Box PCT, Washington, D.C. 20231, and address the contents of the letter to the attention of the PCT Legal Office.

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The executed declaration filed with the instant petition complies with 37 CFR 1.497(a) and (b). The surcharge fee of \$130.00 has been charged to Deposit Account No. 50-1519 as authorized.

Applicants have completed the requirements for acceptance under 35 U.S.C. 371(c). The application has an international filing date of 23 March 2000, under 35 U.S.C. 363, and a 35 U.S.C. 371 date of 30 January 2002.

This application is being forwarded to the National Stage Processing Division of the Office of PCT Operations for continued processing.



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